

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL J. SZOPINSKI and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, WI

*Docket No. 03-1722; Submitted on the Record;
Issued September 3, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a two percent permanent impairment of his right upper extremity, for which he received a schedule award.

On March 21, 2000 appellant, then a 39-year-old letter carrier, filed an occupational disease claim for right shoulder and right elbow tendinitis and right carpal tunnel syndrome. He identified December 1, 1999 as the date he first became aware of his conditions. Appellant stated that he first realized his illness was employment related on February 28, 2000 when he consulted with his doctor. On May 15, 2000 the Office of Workers' Compensation Programs accepted appellant's claim for right rotator cuff tendinitis, right bicipital tendinitis and right carpal tunnel syndrome. Appellant was later diagnosed with a right rotator cuff tear. He filed a claim for recurrence of disability on February 15, 2001, which the Office accepted. The Office authorized right arthroscopy with subacromial decompression, mini-open rotator cuff repair and carpal tunnel release. Dr. Harvey S. Kohn, a Board-certified orthopedic surgeon, performed the authorized surgical procedures on April 26, 2001. Appellant returned to work in a light-duty capacity on July 9, 2001, and he was released to resume his full duties effective February 18, 2002.

On October 6, 2002 appellant filed a claim for a schedule award. In a June 25, 2002 report, Dr. Kohn found that appellant had a 10 percent impairment of the right shoulder due to rotator cuff repair and acromioplasty. Dr. Kohn also determined that appellant had a one percent impairment for his right wrist due to the carpal tunnel release. He noted that appellant was 14 months post right shoulder rotator cuff repair and carpal tunnel release of the right wrist. Appellant related no numbness in the hands, but noted occasional stiffness of his shoulder with occasional discomfort with overhead work. Upon examination, Dr. Kohn found a stable shoulder with full range of motion, a well-healed surgical incision and good rotator cuff strength and girth. Elbow and wrist examinations were within normal limits. He also noted a well-healed carpal tunnel release incision and a negative Tinel's sign at the wrist. Appellant had good intrinsic muscle function and no noted atrophy in the muscle groups of the upper extremity. Grip

strength was noted as 100 percent bilaterally. Dr. Kohn also reported that appellant was on his regular route as a mail carrier and had no definite work restrictions.

On October 10, 2002 the Office requested that Dr. Kohn reexamine appellant to determine the extent of permanent partial impairment of the right upper extremity due to the December 1, 1999 employment injury. Additionally, the Office advised Dr. Kohn that the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) was the standard to be utilized for impairment rating purposes.

In a report dated October 29, 2002, Dr. Kohn stated that appellant had good range of motion and mild noise of his right shoulder on occasion. Dr. Kohn further stated that appellant's grip strength was diminished 10 percent on the right in comparison to the left. Additionally, he noted decreased sensation over the radial aspect of the right thumb, first carpal tunnel release. Dr. Kohn explained that this would equate to a 20 percent disability of the shoulder or 12 percent of a whole man for the right shoulder based on the A.M.A., *Guides*. He further explained that appellant had a one percent disability for the right wrist for Grade 2 diminished sensation of the right hand.

The Office referred the case record to an Office medical adviser for review. In a report dated February 3, 2003, the Office medical adviser noted that appellant continued to complain of intermittent discomfort of the right shoulder especially with overhead activity. The Office medical adviser found that this represented a two percent permanent impairment for Grade 3 pain in the distribution of the suprascapular nerve. Additionally, the Office medical adviser reported that physical examination demonstrated normal strength in the rotator cuff. He also noted that range of motion of the shoulder, wrist and elbow was noted to be full. The Office medical adviser additionally reported that Tinel's sign in the right wrist was negative and all surgical incisions had healed. Appellant's grip strength in the right wrist was reportedly above the threshold for assigning an impairment rating under the fifth edition of the A.M.A., *Guides*. The Office medical adviser concluded that appellant had a two percent permanent impairment of the right upper extremity and that appellant had reached maximum medical improvement approximately one year following his April 2001 surgery.

By decision dated March 27, 2003, the Office granted appellant a schedule award for a two percent impairment of his right upper extremity. The award covered the period April 16 to May 29, 2002, for a total of 6.24 weeks of compensation.

The Board finds that appellant failed to establish that he has more than a two percent permanent impairment of the right upper extremity.

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform

¹ The Act provides that for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks of compensation. 5 U.S.C. § 8107(c)(1).

standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.² Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (fifth edition 2001).³

Although the Office requested a rating from Dr. Kohn based on the A.M.A., *Guides* (fifth edition 2001), his October 29, 2002 report did not reference the A.M.A., *Guides* in support of his estimate of 20 percent right upper extremity impairment. His earlier report dated June 25, 2002 is similarly flawed. Therefore, Dr. Kohn's recent reports are of diminished probative value in determining the extent of appellant's impairment for schedule award purposes.

In contrast, the Office medical adviser, relying upon Dr. Kohn's findings, used the applicable tables from the A.M.A., *Guides* to rate appellant's right shoulder pain. Additionally, he explained his application of the A.M.A., *Guides* to the findings and determined that appellant had a two percent impairment of the right upper extremity based on a Grade 3 pain in the distribution of the suprascapular nerve.⁴ The Office medical adviser also noted that appellant's rotator cuff strength was normal and that he had normal range-of-motion findings in the shoulder, wrist and elbow. He also noted a negative Tinel's sign. The Office medical adviser did not identify any specific factors that would justify an additional rating for appellant's right carpal tunnel release. Therefore, the thorough and well-rationalized medical report of the Office medical adviser constitutes the weight of the medical evidence of record on this issue. The Board finds that appellant has no more than a two percent impairment of the right upper extremity.

² 20 C.F.R. § 10.404 (1999).

³ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁴ A.M.A., *Guides*, Tables 16-10 and 16-15, pages 482, 492. Under Table 16-10 a Grade 3 classification provides for a range of sensory deficit between 26 and 60 percent. According to Table 16-15 the maximum percentage upper extremity impairment due to sensory deficit or pain involving the suprascapular nerve is five percent. To determine the specific impairment rating, the five percent maximum impairment identified under Table 16-15 is multiplied by the percentage sensory deficit identified under Table 16-10. The Office medical adviser's 2 percent impairment rating indicates that he determined that appellant's Grade 3 classification placed him in the 40 percent sensory deficit category under Table 16-10. Accordingly, 5 percent x 40 percent = 2 percent.

The March 27, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 3, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member